

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRENDA STOOTTS EWING, on behalf of)	
herself and all others similarly situated,)	No. C08-0797 RAJ
)	
Plaintiff,)	ORDER GRANTING FINAL
)	APPROVAL TO CLASS ACTION
v.)	SETTLEMENT, APPROVING
)	AWARD OF FEES AND COSTS,
ADMINISTRATIVE SYSTEMS, INC.,)	DISMISSING CLAIMS WITH
)	PREJUDICE, AND DIRECTING
Defendant.)	ENTRY OF JUDGMENT
)	

This matter comes before the court on a motion (Dkt. # 41) for final approval of a settlement in this class action, and a motion (Dkt. # 42) for payment of class counsel's fees and expenses along with an incentive payment to Plaintiff Brenda Stoots Ewing. Although Defendant Administrative Systems, Inc. ("ASI"), supplemented those motions with additional information, it does not oppose any of the relief requested. For the reasons stated below and in the court's prior orders, the court GRANTS both motions subject to the conditions stated below, and directs the clerk to enter judgment dismissing this action with prejudice.

The court heard from the parties at a September 23, 2009 hearing regarding these motions. Because the court had already addressed the form and substance of the settlement agreement in several prior orders, culminating in its June 8, 2009 preliminary approval order, the most recent hearing focused on input from five potential settlement class members who submitted their concerns about the settlement in writing to the court.

1 The court emphasizes that it has carefully considered each of the five submissions from
2 potential class members. Far too often, those affected by class action settlements do not provide
3 any input to the court or to class counsel. In this case, five people not only submitted material to
4 the court, but their input was of substantial value to the court as it considered final approval of
5 the parties' settlement.

6 Geri Truszynski from Wisconsin wrote to express her concerns about Trilegiant
7 Corporation serving as the claims administrator. She noted that media reports detailed
8 accusations that Trilegiant had improperly billed some of its credit monitoring customers. She
9 asked the court to appoint a different claims administrator, and noted her mistrust of Trilegiant.
10 The court has no jurisdiction to investigate the claims against Trilegiant, and suggests no opinion
11 on what practices Trilegiant might or might not have engaged in with its customers. The court
12 insists, however, that the benefits awarded in this settlement come without burdens or potential
13 financial pitfalls for class members. Accordingly, at the September 23 hearing, the court
14 discussed Ms. Truszynski's concerns with counsel for both parties. As a result, ASI's counsel
15 worked with Trilegiant to obtain the following two assurances. First, although this settlement
16 does not require class members to give Trilegiant financial information that could be used to
17 automatically renew credit monitoring at class members' expense, Trilegiant has agreed that it
18 will not in any way attempt to impose expense on class members by billing them for unrequested
19 renewal of the credit monitoring it provides in this settlement. Second, as an additional
20 safeguard for class members' privacy, Trilegiant has confirmed that it will in no way share the
21 names, addresses, or other identifying information for any class members with any other persons
22 or entities. The court appreciates Trilegiant's cooperation, and makes these two agreements an
23 enforceable part of the settlement.

24 Mike and Marie Randall from Florida wrote that they believed that the credit monitoring
25 that the settlement provides should extend longer. At the September 23 hearing, counsel noted
26 that even if class members' information had fallen into the hands of someone who wished to

1 misuse it, it is quite unlikely that he or she would wait for several years after they acquired the
2 information to misuse it. Thus, class counsel focused their efforts on making credit monitoring
3 available to all persons affected by the ASI data breach for one year, with an additional year of
4 monitoring in the event the first year of monitoring revealed cause for concern. Although this
5 may not be a perfect solution, the court is satisfied that the duration of the credit monitoring
6 services that the settlement makes available is a reasonable compromise of the parties' claims.

7 Joshua Abrams from California wrote that he was disappointed that the settlement would
8 not reimburse him for time he spent monitoring his own credit in the wake of the data breach,
9 and also that Trilegiant did not provide a postage-paid envelope for him to return his claim form.
10 As to the second issue, the court notes that the claim submission material advised Mr. Abrams
11 that he could submit his claim online to avoid the cost of postage. Unfortunately, with more than
12 half a million class members, the cost of return postage for each of them would have
13 substantially reduced the other benefits for class members. As to the first issue, ASI did not
14 agree to reimburse class members for time spent protecting their own credit. Again, the court
15 understands that some class members might have preferred a better result, but each class member
16 had the right to opt out of the class and the settlement. The settlement the parties reached is, in
17 the court's view, a fair compromise. The court wholly respects, however, that Mr. Abrams
18 disagrees.

19 Candyce Conley from Washington wrote that in the wake of the notice of the ASI data
20 breach and another similar notice of a data breach from one of her health care providers, she has
21 experienced a great deal of emotional distress. She requested an additional payment, but she did
22 not timely opt out of the class. As the court has already noted, the settlement does not provide
23 for additional payments to any class member. The only option for a class member like Ms.
24 Conley who does not believe that the settlement offers a reasonable benefit is to opt out of the
25 settlement class. Ms. Conley did not submit a timely request to opt out. However, because her
26 objection to the court was submitted by the opt-out deadline, and because it clearly expresses a

1 desire not to accept the settlement benefit, the court construes her submission as a timely opt-out
2 request. Defendant's counsel shall ensure that she is added to the list of persons who have opted
3 out. In making this accommodation, the court in no way suggests that Ms. Conley's request for
4 additional compensation has merit, it simply provides her an opportunity to pursue additional
5 compensation if she chooses.

6 Finally, Michelle Sites of Pennsylvania wrote that she received notice of the settlement at
7 her home address, but the notice was directed to a Pamela Triplet. She investigated the situation
8 and discovered that because she and Ms. Triplet have a similar social security number, ASI has
9 associated Ms. Sites' address with Ms. Triplet's name. Unfortunately, the court ascertained at
10 the September 23 hearing that ASI does not have another address for Ms. Triplet. Nonetheless,
11 to the extent possible, the parties agreed to extend the benefits available in the settlement to Ms.
12 Sites and Ms. Triplet (if she can be located). ASI's counsel shall work with the claims
13 administrator to execute this agreement.

14 Having addressed the input the court received from class members, the court turns to the
15 final approval of the settlement. The court will approve the settlement for the reasons stated
16 below and in its prior orders. The court also notes that the parties' counsel ably addressed
17 remaining concerns about the settlement at the September 23 hearing. The court grants class
18 counsel's request for payment of attorney fees of \$450,000, which includes all pre-approval
19 expenses. The court also approves counsel's request for an additional \$15,000 expense payment,
20 to be paid by ASI separately from settlement proceeds. Finally, the court approves an incentive
21 payment of \$10,000 to Ms. Ewing.

22 The remainder of this order reproduces the parties' proposed order, except in the
23 following respects. The court omitted the parties' unnumbered introductory paragraphs in favor
24 of the preceding discussion. The court inserted monetary amounts in paragraph 14 in accordance
25 with the preceding discussion. The court modified language in paragraph 7 to reflect the
26 imposition of conditions related to Ms. Truszynski, Ms. Conley, Ms. Triplet, and Ms. Sites.

1 Finally, the court modified the language in paragraph 5 to reflect the claims administrator's
2 submission of an updated list of persons who have opted out of the settlement.

3 Class counsel shall ensure that a copy of this order is mailed or otherwise provided to Ms.
4 Truszynski, the Randalls, Mr. Abrams, Ms. Conley, and Ms. Sites.

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

6 1. The Court has subject matter jurisdiction over this matter and all claims asserted
7 in the Action against ASI. The Court has personal jurisdiction over the settling parties, including
8 Settlement Class Members, and subject matter jurisdiction to approve the Amended Settlement
9 Agreement and the settlement.

10 2. The Court has reviewed the form, content, and method of dissemination of the
11 Notice given to the Settlement Class of the proposed settlement and their rights to opt out of the
12 settlement or object to the terms of the Amended Settlement Agreement. Notice has been
13 properly given as required by the Preliminary Approval Order, the Class Action Fairness Act, 28
14 U.S.C. § 1715, and Fed. R. Civ. P. 23(e).

15 a. Notice of the proposed settlement and the Final Fairness Hearing
16 required by the Class Action Fairness Act, 28 U.S.C. § 1715, was provided as required by statute
17 and by the Preliminary Approval Order.

18 b. Notice of the Amended Settlement Agreement and the Final Fairness
19 Hearing was provided to the potential Settlement Class Members as ordered by the Court in its
20 Preliminary Approval Order. The Claims Administrator mailed the Notice to the last known
21 addresses for the Settlement Class Members. ASI had previously mailed one or more notices to
22 the potential members of the Settlement Class and, in doing so, had updated the address
23 information reflected in its records. The Claims Administrator again updated the addresses
24 before providing the Notice, further demonstrating that mailing the Notice was the best notice
25 practicable under the circumstances. In addition, ASI posted the Notice and the Amended
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1 Settlement Agreement on a website, <http://incident.asibpi.com>, that it had established previously
2 to provide information and assistance to the Settlement Class Members.

3 c. The Notice provided the potential Settlement Class Members with the
4 time and information necessary to make an informed decision about whether to participate in the
5 settlement and constituted due and sufficient notice of the Amended Settlement Agreement and
6 of the Final Fairness Hearing.

7 d. The form, content, and method of dissemination of the Notice comport
8 with all the requirements of Fed. R. Civ. P. 23 and state and federal standards of constitutional
9 due process as the best notice practicable under the circumstances of this case. The Notice is
10 accurate and informed potential Settlement Class Members of the claims and defenses asserted in
11 the Action, the reasons for the settlement, their rights to opt out of or object to the settlement and
12 the effect on the Settlement Class Members' legal rights if the Judgment becomes Final and the
13 Effective Date occurs with regard to the Amended Settlement Agreement.

14 3. The potential Settlement Class Members were provided a full opportunity to
15 participate in the Final Fairness Hearing and all Settlement Class Members and other persons
16 wishing to be heard have been heard. Accordingly, the Court determines that all of the potential
17 Settlement Class Members, except those who timely and properly excluded themselves from the
18 Settlement Class, are Settlement Class Members and are bound by the Amended Settlement
19 Agreement and this Judgment.

20 4. The Settlement Class (as defined in the Preliminary Approval Order) is granted
21 final certification for settlement purposes. The following Persons are members of the Settlement
22 Class:

23 All Persons, information as to whom is included in the Class Information, or who
24 have or could have a right or interest as to such information derived from or
25 arising out of a right or interest of such Persons. Excluded from the definition of
26 the Settlement Class are (i) ASI and its officers and directors; (ii) the Court
presiding over any motion to approve this Settlement Agreement; and (iii) those
Persons who timely and validly requested exclusion from the Class.

1 5. Those persons who timely requested to be excluded from the Settlement Class are
2 identified on a list attached to the September 25, 2009 declaration of the Claims Administrator
3 (Dkt. # 49) (the "Opt-Outs"). The Opt-Outs are not bound by the Amended Settlement
4 Agreement or by this Judgment, and shall not receive any benefits under the Amended
5 Settlement Agreement.

6 6. The Court grants final approval to the settlement and finds that it is fair, adequate,
7 and reasonable, and in the best interests of the Settlement Class as a whole. The parties entered
8 into the Amended Settlement Agreement in good faith. The Representative Plaintiff and Class
9 Counsel fairly and adequately represented the interests of Settlement Class Members in
10 connection with the Action and the settlement set forth in the Amended Settlement Agreement.
11 The Amended Settlement Agreement is the product of arm's-length, serious, informed, and non-
12 collusive negotiations between Class Counsel and counsel for ASI. The parties engaged in
13 lengthy and detailed settlement discussions that included the exchange of information concerning
14 the investigation into the theft of ASI's computer, the content of the Class Information, the
15 response of affected individuals to the Pre-Litigation Notice and the Pre-Litigation Offer, and
16 Class Counsel's investigation of the facts giving rise to the allegations made in the Action. Class
17 Counsel and counsel for ASI are knowledgeable and experienced in class action litigation and in
18 the subject matter involved in this case.

19 7. Representative Plaintiff, ASI, and Settlement Class Members shall consummate
20 the settlement according to the terms of the Amended Settlement Agreement. The Amended
21 Settlement Agreement and any additional conditions imposed in this order or any other order of
22 the court shall be deemed incorporated to this Judgment as if explicitly set forth within it and
23 shall have the full force and effect of an order of this Court.

24 8. The Released Claims of Representative Plaintiff and each Settlement Class
25 Member are hereby extinguished as against ASI and the Related Entities. Representative
26 Plaintiff and each Settlement Class Member shall be and hereby are conclusively deemed to have

1 fully, finally, and forever released, relinquished, and discharged all Released Claims against ASI
2 and the Related Entities upon the terms and conditions provided in the Amended Settlement
3 Agreement, including that, with respect to any and all Released Claims, upon the Effective Date
4 Representative Plaintiff expressly shall have, and each of the other Settlement Class Members
5 shall be deemed to have, and by operation of the Amended Settlement Agreement and the
6 Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil
7 Code § 1542, which provides:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
9 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
10 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
11 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
12 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
13 HER SETTLEMENT WITH THE DEBTOR.

14 and also any and all provisions, rights, and benefits conferred by any statute, regulation or
15 ordinance of the United States or any state, district, or territory of the United States, or political
16 subdivision thereof, or principle of common law including but not limited to that set forth in
17 *Jackson v. Miller*, 776 S.W.2d 115, 118 (Tenn. Ct. App. 1989), which is similar, comparable, or
18 equivalent to California Civil Code § 1542. Settlement Class Members, including the
19 Representative Plaintiff, and any of them, may hereafter discover facts in addition to or different
20 from those that they, and any of them, now know or believe to be true with respect to the subject
21 matter of the Released Claims, but the Representative Plaintiff expressly shall have, and each
22 other Settlement Class Member shall be and hereby are conclusively deemed to have fully,
23 finally, and forever settled and released any and all Released Claims. ASI and the
24 Representative Plaintiff expressly have, and each other Settlement Class Member shall be and
25 hereby are conclusively deemed to have, acknowledged that the foregoing waiver is a material
26 element of the settlement of which this release is a part.

9. This release is binding and effective on each Settlement Class Member and any of
their predecessors, successors, partners, parents, subsidiaries, affiliates, subrogees, custodians,

1 agents, assigns, representatives, marital communities, heirs, executors, trustees, administrators
2 and any other person or entity having any legal or beneficial interest in any Released Claim,
3 including Unknown Claims.

4 10. Settlement Class Members shall be and hereby are permanently barred and
5 enjoined from, either directly, indirectly, representatively, as a member of or on behalf of the
6 general public, or in any capacity, commencing, prosecuting, or participating in any proceedings
7 in this or any other forum (other than participation in the settlement as provided in the Amended
8 Settlement Agreement and this Judgment) asserting any of the Released Claims against ASI or
9 any of the Related Entities.

10 11. ASI shall be and hereby is conclusively deemed to have fully, finally, and forever
11 released, relinquished, and discharged, Representative Plaintiff and Class Counsel from claims
12 based upon or arising out of the institution, prosecution, assertion, settlement or resolution of the
13 Action, except for enforcement of the Amended Settlement Agreement as to such matters as
14 pertain to each of them.

15 12. None of the following: this Judgment, the Preliminary Approval Order, the
16 Memorandum of Understanding, the original Settlement Agreement, the Amended Settlement
17 Agreement, the settlement, any act performed or document executed pursuant to or in
18 furtherance of the original or Amended Settlement Agreement or the settlement is or may be
19 deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of
20 any Released Claim, or of any wrongdoing, fault, omission, or liability of ASI, any of the
21 Related Entities, Representative Plaintiff, or any of the Settlement Class Members. The
22 Memorandum of Understanding, the original Settlement Agreement the Amended Settlement
23 Agreement, the Preliminary Approval Order and this Judgment and any related document,
24 proceeding, action, report, or account, shall not be offered or received into evidence in any civil,
25 criminal, or administrative proceeding, other than proceedings that may be necessary to enforce
26 the Amended Settlement Agreement, the releases granted in the Amended Settlement

1 Agreement, or this Judgment, or in order to support a defense or counterclaim based on
2 principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or
3 reduction or any other theory of claim preclusion or issue preclusion or similar defense or
4 counterclaim.

5 13. The Class Action Complaint and all the claims alleged in the Action are hereby
6 dismissed with prejudice.

7 14. The Court hereby awards attorneys' fees in the amount of \$450,000, an amount
8 that includes pre-approval expenses. The court awards an additional \$15,000 for post-approval
9 expenses, to be paid by ASI from funds separate from the settlement fund. The court awards an
10 incentive payment of \$10,000 to class representative Brenda Ewing. The Claims Administrator
11 shall pay the attorney fees, costs, expenses, and ASI shall pay the Representative Plaintiff award
12 and the post-settlement attorney fee to Class Counsel as provided in the Amended Settlement
13 Agreement.

14 15. The Claims Administrator is authorized and directed to disburse benefits to
15 qualifying Settlement Class Members pursuant to the Amended Settlement Agreement.

16 16. All checks issued by the Claims Administrator to Settlement Class Members as
17 reimbursement for purchasing Alternative Credit Monitoring or under a Benefit Claim for
18 Identity Theft Reimbursement shall be valid for a period limited to ninety (90) days after the
19 checks are issued, after which date those checks shall be void and will not be subject to being
20 cashed or honored. Following the expiration of that 90 day period, the Claims Administrator
21 shall not pay or honor such checks. These checks shall state on their face this limited period of
22 validity.

23 17. The Claims Administrator is authorized to pay Benefit Claims as provided in the
24 Amended Settlement Agreement. No Person shall have any claim against ASI, ASI's counsel,
25 the Claims Administrator or Class Counsel, based on distributions of benefits made substantially
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1 in accordance with the Amended Settlement Agreement and the settlement contained herein, or
2 further order(s) of the Court.

3 18. Without affecting the finality of this Judgment in any way, this Court retains
4 continuing jurisdiction over the parties, including ASI, Representative Plaintiff, the Claims
5 Administrator and the Settlement Class for the administration, consummation, and enforcement
6 of the terms of the Amended Settlement Agreement.

7 19. If the Effective Date does not occur, as provided in the Amended Settlement
8 Agreement, this Judgment and all orders entered in connection with the settlement shall be
9 vacated and null and void, the Parties shall return to their respective litigation positions as of the
10 date immediately preceding the entry of the Preliminary Approval Order, and the Court shall
11 issue a new case scheduling order after conducting a status conference with the parties.

12 IT IS SO ORDERED.

13 Dated this 30th day of September, 2009.

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17 The Honorable Richard A. Jones
18 United States District Judge
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